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April 26, 2005

Robert E Feldman
Executive Secretary
Attention Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W
Washington, DC 20429
(RIN 3064-AC89)

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 1-5
Washington, DC 20219
(Docket No. 05-04)

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
(Docket No. R-1225)

Re: CRA Proposal

Dear Mr. Sirs/Madam:

The California Bankers Association (CBA), a nonprofit trade association established in 1891, representing banks and savings institutions in California (hereafter, simply "banks"), appreciates this opportunity to comment on the joint FDIC, OCC, and Federal Reserve proposal relating to the Community Reinvestment Act CBA is the largest bank trade association in California, and its members include small community banks, regional and super-regional banks, and the largest banks in the nation.

CBA and its members appreciate any efforts to reduce the regulatory burdens associated with compliance with the Community Reinvestment Act We support the central tenet of the Act, which is to provide credit to communities served by banks.

CBA supports certain aspects of the proposal that, taken in isolation, could provide more flexibility to banks and reduce regulatory burden. Relieving intermediate banks (with assets of between $250 million and $1 billion) of the requirement to submit reports of small business, small farm, and community development loans would reduce unnecessary burdens for the affected banks Small banks under the current definition are not subject to this requirement, and we do not believe that extending relief to all sub-$1 billion banks would undermine the purposes of CRA.

CBA would also support in concept taking into account a bank's community development activities in rural areas and in connection with disaster relief. We agree that focusing only on activities in areas encompassed by census tracts is unnecessarily limiting, and ignores banks' efforts to provide valuable banking services in rural areas. However, as discussed in further detail below, we oppose the added criterion that only activities to "underserved" populations are conforming, a concept that is difficult to assess.

**Benefits Must Outweigh New Burdens**

CBA is disappointed that the series of proposals made since last year apparently will not result in tangible improvements in the regulation for banks with between $250 million and $1 billion in assets We continue to support, as we articulated in prior comment letters, increasing the size threshold of "small institution" from the current $250 million level to at least $500 million, but preferably $1 billion. We articulated the reasons that a small bank in fact meets the credit needs of its community if it makes a certain amount of loans relative to deposits taken We also noted that in a populous state such as California, a single branch could approach the current $250 million threshold.

Only if the agencies abandon raising the small bank threshold, then CBA would tepidly support the current proposal. We note that it is vital that the final regulations, which are intended to provide some regulatory relief, should result in benefits that would outweigh the uncertainty and costs of migrating to a new CRA rating scheme The proposal would institute a significant change in the way that intermediate banks would be evaluated. Some banks would be migrating from the large bank test, while others would have "grown" into the intermediate bank test When a regulation such as CRA is amended, banks must adopt new procedures, conduct training, rewrite or acquire new software, and change policies All this necessitates the expenditure of significant time and resources.

We note that it is not at all clear from the proposal that a migration away from the existing large bank subtests to a lending test and community development test would better ensure that the purposes of CRA are met, or that it would produce tangible relief for affected banks. The elements of the new community development test, indeed, appear to encompass all the elements of the existing tests, namely lending, investments, and services. While the proposal would appear to offer the hope of greater flexibility for banks by not requiring a rigid 25% weighting for services and investments, nevertheless, the new community development test would still count for the same aggregate weight of 50% of the overall rating. In substance, what would banks have to do differently under the new test?

We urge the agencies to clarify what specific responsibilities banks will have with respect to lending, investments, and services under a new test. To ensure that banks will have more flexibility in meeting the new requirements than under the large bank test, both the regulation and the conforming examination guidelines should leave no doubt in this regard

## Linking Other Lending Statutes

CBA continues to oppose any significant expansion of the concept that a bank's CRA rating should be tied to violations of other laws. We agree that a bank that unlawfully discriminates when making CRA loans may be subject to criticism under CRA if such actions directly reflect upon the bank's record of reinvestment within the meaning of the law.

However, we point out that each of those other laws specified in the proposal was enacted by Congress at different times to fulfill different policies Each law features its own enforcement scheme that represents a compromise among the different stakeholders affected by the law A single law typically includes different enforcement provisions depending upon the violation. For example, severe penalties attach to a violation of the anti-kickback provisions of RESPA, but not to the timing requirements for delivering the good faith estimate of charges

In none of these other statutes is there evidence of any intent that those statutes would be enforced through the CRA Nor does the CRA permit the banking agencies to consider evidence of violations of those statutes in deriving a bank's CRA rating. Doing so is not only unauthorized under the principles of administrative law because it is beyond the scope of statutory authority, but it also upsets the balance between compliance and enforcement carefully crafted by Congress when those laws were enacted.

CBA is concerned about the latitude that CRA examiners may have in the face of evidence of a bank's unrelated compliance record We note that the existence of regulatory violations of the enumerated statutes does not necessarily reflect discriminatory practices. A programming error in a HMDA program could produce widespread errors, for example, but have no relation to actual lending practices Errors related to Regulation Z formatting standards could have nothing to do with actual incidents of unfair practices. There are also instances in which violations are challenged by a bank. How should this fact be treated by a CRA examiner?

As stated above, in concept, we believe that lending activities considered for CRA purposes that are conducted in a discriminatory or unfair manner could be construed as related to a bank's CRA performance. But we see potential for regulatory overreaching in this apparent effort to formalize the linking of CRA with other lending statutes. The agencies should also consider the potential for non-serious violations to be mischaracterized by third parties

## Responses to Specific Requests For Comments

- *Are there other approaches to address the CRA burdens and obligations of banks with less than $1 billion in assets?*

The agencies should adopt the approach taken by the Office of Thrift Supervision by raising the small bank threshold to $1 billion, but not less than $500 million CBA also supports the

OTS rule applicable to large institutions (over $1 billion in assets). That is, a large bank would be able to base its CRA rating on a combination of any of the three major activities (lending, services, investments) subject only to a minimum of 50% lending By not conforming their regulations to the OTS final rules, the other banking agencies would create disparities for similarly situated institutions

- *Should the asset size for small and intermediate-sized banks be adjusted based on changes to the Consumer Price Index?*

As a general matter, we support periodically adjusting thresholds. An adjustment of this type does not produce the burden associated with changes in other regulations, such as the ceiling for deposit insurance, which would entail significant changes to programming and documentation. If an adjustment is adopted, it should apply retroactively to 1996 when the CRA thresholds were established

- *Does the proposal provide more flexibility with respect to providing loans, investments and services? Does the proposal make the evaluations of banks' community development performance more effective than under the current regulation?*

The text of the proposed changes does not illuminate the answer to this question It is simply not ascertainable how and to what extent the elements of the community development test differ from the existing subtest. Also, whether the proposed change would result in more flexibility, and whether the evaluations would be more effective, would depend partly on the examiners and the revised examination guidelines. For example, would a bank's community development rating be based on activities in each listed category? Or could a bank not engage in any investment activities if the performance context supports this decision? If the agencies should adopt this proposal, they should explicitly state that a bank has this same degree of flexibility as a large bank under the OTS rule, that is, it could allocate its activities among any of the three major activities subject only to a minimum floor for lending.

- *Questions related to how the community development test affects the overall CRA rating*

As discussed, it is difficult to ascertain how the new test substantively differs from the existing test because it consists of the same elements of the tests it replaces We do not support any major changes that would engender new burdens and uncertainties unless they are significantly and clearly outweighed by new benefits

- *Questions related to the definition of "rural."*

Generally, the recognition of activities in rural areas would be a positive change. However, if qualified activities are further defined in a manner that requires banks to trace and document benefits to specifically defined underserved populations, then banks would encounter the same kind of challenges presently faced in connection with making qualified investments. The examples cited in the proposal (unemployment rates one-and-a-half times the national average, poverty rates of 20% or more, population loss of 10 percent or more between the previous and most recent census; net migration loss of 5 percent or more over the 5 year period preceding the most recent census) all are recipes for creating mountains of research and paperwork. Banks would have to spend endless hours building evidence that underserved persons and activities are benefited, or in other words, preparing paperwork rather than making loans.

CBA appreciates this opportunity to present these comments We urge the agencies consider again the same changes already adopted by the OTS for savings associations. Similar institutions in similar circumstances should not be subject to substantially different rules. Only if those rules are not adopted, CBA would support creating an intermediate bank size test but only if the unnecessary burdens imposed on intermediate-sized institutions under the large bank test would be substantially reduced, and banks are provided with greater flexibility.

Sincerely,

Leland Chan
General Counsel